

)	
Investigation by the Department on its own Motion)	
into the Appropriate Pricing, based upon Total Element)	
Long-Run Incremental Costs, for Unbundled Network)	
Elements and Combinations of Unbundled Network)	D.T.E. 01-20
Elements, and the Appropriate Avoided Cost Discount)	
for Verizon New England, Inc. d/b/a Verizon)	
Massachusetts' Resale Services in the)	
Commonwealth of Massachusetts.)	
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HEARING OFFICER RULING ON UNAUTHORIZED RESPONSE COMMENTS

The Department of Telecommunications and Energy (“Department”) opened the D.T.E. 01-20 docket on January 12, 2001. On July 11, 2002, the Department issued its D.T.E. 01-20 Part A order (“Order”). On January 14, 2003, the Department issued an order deciding parties’ motions for reconsideration (“Reconsideration Order”). As directed in the Reconsideration Order, Verizon submitted its D.T.E. 01-20 Part A Compliance Filing on February 13, 2003. The Department established a procedural schedule for the compliance phase of the proceeding, including initial and reply comments. The procedural schedule memorandum specifically stated that: “The Department will not schedule further comments unless the need arises after the technical session or the comments scheduled here.” D.T.E. 01-20, Hearing Officer Memorandum Re: Procedural Schedule (February 11, 2003).

According to the established procedural schedule, parties including AT&T Communications of New England, Inc. (“AT&T”) submitted initial comments on March 18, and Verizon New England, Inc. d/b/a Verizon Massachusetts (“Verizon”) submitted reply comments on March 28, 2003.

After reviewing the parties' initial and reply comments, the Department did not find a need to request a round of "surreply" comments.¹ However, on March 31, 2003, AT&T filed an unsolicited response to Verizon's reply comments, containing a motion for leave to file that response. Verizon responded with a Motion to Strike Unauthorized Pleading of AT&T (April 1, 2003), and AT&T filed an opposition to that motion on April 2, 2003.

II. ANALYSIS AND FINDINGS

The Department specifically stated in issuing the compliance phase procedural schedule in this case that we would inform parties if we sought further comment beyond initial and reply comments. As noted above, the Department did not find a need to request further comments after reply comments, except on one limited issue. AT&T filed its additional "response" without a prior motion requesting leave to do so, although there was no reason it could not have filed such a motion and allowed the Department to consider it before presuming to distribute its unsolicited comments to the Department and parties. See Complaint of Fiber Technologies Networks, L.L.C., D.T.E. 01-70, Interlocutory Order at 3 n.4 (December 24, 2002) (refusing to consider unsolicited replies not provided for in Department's procedural rules and filed without leave).

Given that the Department did not authorize these response comments and that AT&T failed to request prior leave to file the comments, we do not accept AT&T's response comments. The Department will not consider the response comments and they are not part of the record in this proceeding. As AT&T's motion for leave to submit a response to Verizon's reply comments is denied, we find it unnecessary to rule on Verizon's April 1, 2003, motion to strike the response.

III. RULING

Accordingly, after due consideration, AT&T's motion for leave to file a response to Verizon's March 28, 2003, reply comments is denied.

¹ The Hearing Officer issued a memorandum requesting comment on one issue only raised in Verizon's reply comments. The memorandum specifically stated that responses be limited to the issue of Verizon's proposal to clarify its tariff to address RCN's concerns about the application of TELRIC rates to IOF transport. D.T.E. 01-20, Hearing Officer Memorandum Re: Response to Verizon Comment (April 1, 2003).

Under the provision of 220 C.M.R. § 1.06(6)(d)(3), any aggrieved party may appeal this Ruling to the Commission by filing a written appeal with supporting documentation by April 7, 2003 at 5:00 p.m. A copy of this Ruling must accompany any appeal. Any response to any appeal must be filed by April 10, 2003 at 5:00 p.m.

Date: April 2, 2003

_____/s/_____
Marcella Hickey, Hearing Officer